UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WILLIE STEWART,

Petitioner,

v.

JAMES YATES, Warden,

Respondent.

Civil No. 08cv1177-BTM (NLS)

ORDER GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS

On July 1, 2008, Petitioner, a state prisoner proceeding pro se, filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. On July 9, 2008, the Court dismissed this action because Petitioner had failed to satisfy the filing fee requirement, and because Petitioner had failed to state a cognizable claim in the Petition or allege exhaustion of state court remedies with respect to any cognizable federal claim. Petitioner was instructed that if he wished to proceed with this action he must either pay the filing fee or move to proceed in forma pauperis **and** file a First Amended Petition on or before September 15, 2008. Petitioner has now filed a request to proceed in forma pauperis, but has not yet filed a First Amended Petition.

Petitioner has no funds on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the $5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the above-referenced action as a poor person without being required to prepay fees or costs and without being required to post security. However, this action remains **DISMISSED** for the reasons set forth in this Court's July 9, 2008 Order. If Petitioner wishes to proceed with this action, he must file a First Amended Petition on or before **September 15, 2008** which cures the pleading defects identified in the Court's July 9, 2008 Order of dismissal.

IT IS SO ORDERED.

DATED: July 21, 2008

Honorable Barry Ted Moskowitz
United States District Judge